

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

In re Teflon Products Liability Litigation, : CASE NO.: 4:06-cv-00115-REL-CFB
MDL NO. 1733 :
:
LISA HOWE, an individual, MELISSA) (Previous Case No. CV05-5488 DDP
OCHIRO, an individual, DIANNE) MANx (USDC CD CA)
WALTON, an individual, and MARIA)
SPROWL, on Behalf of Themselves and) **SECOND AMENDED CLASS**
All Others Similarly Situated,) **ACTION COMPLAINT FOR:**
)
Plaintiffs,) (1) **VIOLATION OF THE**
) **CALIFORNIA UNFAIR**
v.) **COMPETITION LAW [Cal. Bus. &**
E.I. DUPONT DE NEMOURS &) **Prof. Code §§ 17200 et seq.];**
COMPANY,)
) (2) **VIOLATION OF THE**
Defendant.) **CALIFORNIA CONSUMERS**
) **LEGAL REMEDIES ACT [Cal. Civ.**
) **§§ 1750 et seq.];**
)
) (3) **VIOLATION OF THE**
) **CALIFORNIA FALSE**
) **ADVERTISING LAW [Cal. Bus. &**
) **Prof. Code §§ 17500 et seq.];**
)
) (4) **NEGLIGENCE;**
)
) (5) **FRAUDULENT INDUCEMENT,**
) **DECEIT, AND FRAUDULENT**
) **CONCEALMENT;**
)
) (6) **NEGLIGENT**
) **MISREPRESENTATION: AND**
)
) (7) **RESTITUTION (UNJUST**
) **ENRICHMENT)**
)
[DEMAND FOR JURY TRIAL]

**SECOND AMENDED CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND MONETARY RELIEF AND RETENTION OF
JURISDICTION**

(Jury Trial Demanded)

Class Representative Plaintiffs, LISA HOWE, MELISSA OCHIRO, DIANNE WALTON and MARIA SPROWL (collectively "Class Representative Plaintiffs") on their own behalf and on behalf of all others similar situated, by and through their undersigned counsel, hereby file this Second Amended Class Action Complaint for Injunctive And Monetary Relief against Defendant, E.I. DUPONT DE NEMOURS & COMPANY ("DuPont"), and allege:

I. INTRODUCTION

1. This is a class action seeking monetary and other relief arising from, among other things, DuPont's deceptive and unfair trade practices and making of fraudulent, false, misleading, deceptive and unconscionable representations and materials omissions to the consuming public about the safety of a product commonly known as "Teflon." Cooking products containing Teflon can release harmful and dangerous substances, including a chemical that has been determined to be "likely" to cause cancer in humans, during the intended personal, family, household and commercial use for which those products were acquired or retained.

2. DuPont manufactured and distributed Teflon when it knew or should have known that Teflon contains substances that were dangerous and harmful to the public that can be released when cooking products made with Teflon are used for their intended purposes.

3. This action is brought to require DuPont (i) to pay damages to the Class Representative Plaintiffs and other Class Members who are purchasers and/or users of cooking products made with or containing DuPont's Teflon product; (ii) to create a fund for independent scientific researchers to further investigate the potential for adverse health effects to consumers who have used cooking products containing

1 Teflon; and (iii) to require that DuPont provide a warning label on cooking products
2 regarding the potential adverse and harmful effects of Teflon.

3 **II. JURISDICTION AND VENUE**

4 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332
5 (a)(1) and (d)(2) in that this action seeks monetary relief in excess of \$5,000,000.00,
6 exclusive of interest, costs and attorney's fees and is between citizens of different
7 States.

8 5. Venue is appropriate in this judicial circuit pursuant to 28 U.S.C. §
9 1391 and California Civil Code § 1780(c) because a substantial part of the events or
10 omissions giving rise to the claims occurred in the Central District of California.

11 **III. REPRESENTATIVE CLASS PLAINTIFFS**

12 6. Plaintiff, DIANNE WALTON, is a resident of Ventura County,
13 California and at all times material hereto, purchased and/or continued to use for
14 herself and her family cooking products containing or made with DuPont's Teflon
15 product. Plaintiff brings this action on behalf of herself, the Class (defined below),
16 and on behalf of the general public.

17 7. Plaintiff, MELISSA OCHIRO, is a resident of Los Angeles County,
18 California and at all times material hereto, purchased and/or continued to use for
19 herself and her family cooking products containing or made with DuPont's Teflon
20 product. Plaintiff brings this action on behalf of herself, the Class (defined below),
21 and on behalf of the general public.

22 8. Plaintiff, LISA HOWE, is a resident of Los Angeles County, California
23 and at all times material hereto, purchased and/or continued to use for herself and
24 her family cooking products containing or made with DuPont's Teflon product.
25 Plaintiff brings this action on behalf of herself, the Class (defined below), and on
26 behalf of the general public.

27 9. Plaintiff, MARIA SPROWL, is a resident of Ventura County,
28 California and at all times material hereto, purchased and/or continued to use for

1 herself and her family cooking products containing or made with DuPont's Teflon
2 product. Plaintiff brings this action on behalf of herself, the Class (defined below),
3 and on behalf of the general public.

4 **IV. DEFENDANT**

5 10. DuPont is a Delaware corporation. DuPont sells or distributes Teflon
6 throughout the State of California.

7 11. DuPont is in the business of manufacturing and supplying Teflon for
8 distribution, marketing, wholesaling and retailing in various products made for
9 consumer use. Included among these products are housewares, household
10 appliances, and cooking products such as pots and pans.

11 12. This Court has jurisdiction over DuPont pursuant to the California
12 Constitution, Article XI, Section 10 and California Code of Civil Procedure §
13 410.10 because DuPont is transacting business and committing the acts complained
14 of herein in the State of California.

15 **V. BACKGROUND AND GENERAL ALLEGATIONS**

16 13. DuPont was founded in 1802.

17 14. DuPont operates in more than seventy (70) countries.

18 15. Teflon was invented in 1938 at DuPont's Jackson Laboratory.

19 16. Teflon is DuPont's trademarked name for the chemical
20 polytetrafluoroethylene (PTFE).

21 17. DuPont has registered the Teflon trademark in 19 countries and first
22 began selling Teflon commercially in 1946.

23 18. As DuPont proudly boasts in its Teflon website:

24 Teflon is really everywhere. Not only can you find it in
25 your clothes and on your cookware, but you can also find
26 it on products on almost every continent.

27 19. Teflon is commonly found in "non-stick" cooking products, such as in
28 pots and pans, star fryers and woks, pizza pans, breadmakers, cookie sheets, griddle

1 pans and skillets, wafflers, deep fryers, crock pots, roasting pans, cake pans and
2 molds, and other common cooking utensils and aids.

3 20. Teflon and the chemicals used in its production represent a \$2 billion
4 per year industry.

5 21. DuPont nets an estimated \$200 million per year from its sale of Teflon.

6 22. DuPont has advertised and represented to the public that Teflon makes
7 life easy, and reportedly has called Teflon a "housewife's best friend."

8 23. DuPont claims on its Teflon website that "the Teflon brand is one of
9 the world's most recognized and respected of all ingredient brands" and that Teflon
10 enhances consumer recognition.

11 24. During the last fifty (50) years, DuPont's scientists have studied
12 whether products containing Teflon are safe for use by consumers. DuPont has
13 continually represented to consumers in public statements and documents, in press
14 releases and on its websites that Teflon is safe for consumer use and has denied that
15 the use of cooking products containing Teflon can be harmful to human health.

16 25. Perflourooctanoic acid ("PFOA") is a perflourinated detergent/
17 surfactant that is manufactured, processed, and/or distributed by DuPont in
18 connection with its manufacture of Teflon. PFOA is also sometimes referred to by
19 DuPont as C-8.

20 26. PFOA is the chemical used to give Teflon its "non-stickiness."

21 27. PFOA is a liver toxin in animals, is biopersistent in humans and
22 animals and bioaccumulative in humans.

23 28. PFOA is associated with other health concerns in animals, including
24 cancer and developmental defects.

25 29. PFOA is not naturally occurring but is nonetheless found to
26 contaminate the blood of humans in all geographic regions of the United States.

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1 30. For example, a study released in 2001 by 3M Corporation found that
2 PFOA was present in the blood of ninety six percent (96%) of the 598 children
3 tested. The children were located in 23 states.

4 31. Studies have indicated that PFOA causes developmental toxicity and
5 other adverse effects in animals.

6 32. DuPont has conducted both animal and human studies and tests on
7 PFOA.

8 33. DuPont has continually represented to consumers in public statements
9 and documents, in press releases and on its websites that there is no danger posed by
10 PFOA when using cooking products coated with Teflon and has denied that the use
11 of cooking products coated with Teflon can be harmful to human health.

12 34. In 1981, however, 3M, a manufacturer of PFOA, advised DuPont that
13 PFOA may cause birth defects in laboratory animals.

14 35. Also in 1981, DuPont possessed a document describing the results of a
15 blood sampling study DuPont conducted on eight (8) of its pregnant employees
16 employed at the plant where PFOA is manufactured. This document identified the
17 levels of PFOA in the blood of DuPont's pregnant employees and described the
18 status of the child.

19 36. A purpose of DuPont's blood sample study was to monitor these
20 pregnant employees for PFOA exposure, and to monitor umbilical cord blood for
21 the presence of PFOA and to test the babies' blood for the presence of PFOA.

22 37. The 1981 document demonstrates the presence of PFOA in the
23 umbilical cord blood of at least one of the eight (8) DuPont employees and in the
24 blood of another worker's baby. Thus, DuPont knew or should have known from this
25 study that PFOA moved from the mother, through the placenta, to the fetus.

26 38. In 1982, DuPont reported data to the EPA regarding the transplacental
27 movement of PFOA in rats. The EPA considered this information to be "substantial
28 risk data." DuPont failed to disclose to the EPA (or to consumers), however, that it

1 had obtained human blood sampling data in 1981 that confirmed the transplacental
2 movement of PFOA in humans and further failed to disclose to the EPA the
3 information it had about the presence of birth defects (described below) in the
4 babies of its female workers exposed to PFOA.

5 39. The EPA contends that DuPont's human blood sampling information
6 demonstrating the transplacental movement of PFOA "reasonably supports the
7 conclusion that PFOA presents a substantial risk of injury to human health."

8 40. More specifically, the EPA contends that DuPont's human blood
9 sample data demonstrating that PFOA crosses the human placental barrier between
10 PFOA exposed mothers and their fetuses suggests that the fetuses could experience
11 toxic effects from PFOA, including bioaccumulation and, as observed in animal
12 tests, developmental toxicity and liver toxicity.

13 41. The EPA considers DuPont's human blood sampling information that
14 confirms transplacental migration of PFOA "to reasonably support the conclusion of
15 a substantial risk of injury to health or to the environment."

16 42. Moreover, the EPA considers DuPont's blood sample data confirming
17 the transplacental movement of PFOA to be "known toxicological information"
18 about PFOA.

19 43. Additionally, documents maintained by DuPont chronicling the health
20 of babies born to DuPont workers exposed to PFOA indicate birth defects in two (2)
21 of seven (7) babies. One child had eye and tear duct defects and the second had
22 nostril and eye defects.

23 44. Among other things, as a result of DuPont's failure to disclose its 1981
24 blood sample data to the EPA, the EPA launched an investigation into DuPont's
25 concealment of its study information and determined that DuPont engaged in
26 unlawful behavior by concealing the blood sample study results.

27 45. DuPont's concealment of its 1981 blood sample study information may
28 well have altered the continued commercialization of Teflon and the profits received

1 by DuPont from its sale of Teflon. As the EPA pointedly states in its complaint
2 against DuPont contending that DuPont violated the Federal Toxic Substances
3 Control Act from June 1981 to March 2001 by not reporting health risks from
4 exposure to PFOA:

5 [the EPA's efforts to investigate the risks posed by PFOA]
6 might have been more expeditious had the data on
7 transplacental movement of the chemical in humans been
8 submitted immediately by DuPont when DuPont obtained
9 the information in 1981.

10 46. DuPont has settled the claims brought by the EPA claiming it violated
11 the Federal Toxic Substances Control Act.

12 47. In May, 2005, however, a federal grand jury from the Justice
13 Department's Economic Crimes Section issued a subpoena to DuPont regarding
14 DuPont's use of PFOA.

15 48. There are numerous additional facts and studies that demonstrate that
16 exposure to PFOA causes adverse health effects. PFOA has been linked to cancer,
17 organ damage, and other negative health effects in tests on laboratory animals. For
18 example, male and female rats and mice have developed several different kinds of
19 tumors when exposed to PFOA.

20 49. Various studies have confirmed that exposure to PFOA causes or may
21 cause vascular disease. For example, it is reported that workers exposed to PFOA at
22 3M's plant in Cottage Grove, Minnesota, demonstrated a statistically significant,
23 elevated risk of dying from cerebrovascular disease. Findings of vascular disease
24 have also been reported in a study of DuPont workers exposed to PFOA.
25 Additionally, DuPont's study of the blood of its workers demonstrates a statistically
26 significant correlation between cholesterol and PFOA. Similarly, there was also a
27 statistically significant correlation between cholesterol and PFOA found in a study
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1 of Italian workers exposed to PFOA. Moreover, there are animal studies showing
2 changes in blood chemistry associated with PFOA exposure that bolster these
3 human study results.

4 50. Studies have also shown that exposure to PFOA correlates to
5 incidences of prostate cancer. For example, workers at 3M's Cottage Grove plant
6 exhibited a statistically significant association between the length of workplace
7 PFOA exposure and prostate cancer mortality. Moreover, an elevated risk of dying
8 from prostate cancer was found among certain workers exposed to PFOA.
9 Additionally, workers at 3M's Decatur, Alabama, plant exhibited an increase in
10 demand for medical care for male reproductive cancers (including prostate)
11 compared to the general population, with the greatest increases among those
12 workers in the long-time, high-PFOA-exposure category.

13 51. There are numerous other studies demonstrating many potential health
14 risks related to exposure to PFOA. Some of these studies include:

15 (a) Two analyses of leukemia incidence were conducted from 1956-
16 1989 showing statistically increased odds ratios for workers in DuPont's
17 Washington Works plant from 1956-1989. Additionally, a general mortality study
18 found an increase in leukemia.

19 (b) Workers exposed to perfluorochemicals at 3M's Decatur,
20 Alabama plant exhibited significantly increased numbers of episodes of care for
21 intestinal tumors versus those not exposed occupationally. An elevated increase of
22 risk of dying from cancer of the large intestine was also seen in those exposed to
23 PFOA in 3M's Cottage Grove, Minnesota plant compared to the general population.

24 (c) At 3M's Cottage Grove, Minnesota plant an elevated risk of
25 dying from pancreatic cancer or pancreatic disease was seen among workers
26 exposed to PFOA versus those not exposed occupationally.

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1 (d) At 3M's Cottage Grove, Minnesota, plant an elevated risk of
2 dying from cancer of the testis or other male reproductive cancers was seen among
3 workers exposed to PFOA versus those not exposed occupationally.

4 (e) A 3M-sponsored animal study found a statistically significant
5 increase in fibroadenomas (mammary tumors) correlated with PFOA dose.

6 (f) There are also studies that demonstrate PFOA may be related to
7 adverse pituitary effects and immunological function.

8 52. Over 40 years ago, DuPont conducted human experiments with Teflon-
9 laced cigarettes to determine why certain workers were becoming sick on the job
10 with a Teflon-related illness commonly called Polymer Fume Fever. DuPont laced
11 the cigarettes of its volunteers with Teflon and had the volunteers inhale the
12 cigarette fumes until they became sick. In these dosing experiments up to 90% of
13 the people in the highest dose group became ill for an average of 9 hours,
14 demonstrating flu-like symptoms, including chills, back ache, fever and coughing.
15 These symptoms are commonly linked to Polymer Fume Fever. DuPont
16 acknowledges that Teflon fumes can sicken people, causing Polymer Fume Fever.

17 53. Moreover, apparently aware of the adverse effects in humans of
18 inhaling heated Teflon, DuPont required its employees to wear respirators when
19 working with Teflon heated to 400°F (or more) while in poorly ventilated areas.
20 Experiments demonstrate that when cooking in the home, the surface of a Teflon-
21 coated pan can reach this temperature within 2 minutes using a conventional stove
22 top burner set on high.

23 54. Reports indicate that a Teflon-coated pan reached 721°F in just five
24 minutes under the same test. DuPont studies show that Teflon emits toxic
25 particulates at 446°F. At 680°F Teflon-coated pans release at least six toxic gases,
26 including two carcinogens, two global pollutants, and MFA, a chemical lethal to
27 humans at low doses. At temperatures that DuPont scientists claim are reached on
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1 stovetop drip pans (1000°F), non-stick coatings break down to a chemical warfare
2 agent known as PFIB, and a chemical analog of the WWII nerve gas phosgene.

3 55. For the past fifty years DuPont has claimed that their Teflon coatings
4 do not emit hazardous chemicals through normal use. In a recent press release,
5 DuPont wrote that "significant decomposition of the coating will occur only when
6 temperatures exceed about 660 degrees F (340 degrees C). These temperatures alone
7 are well above the normal cooking range." Reported tests show, however, that
8 Teflon-coated cookware exceeds these temperatures through the common act of
9 preheating a pan on a burner set on high. The toxic particles and gases emitted when
10 Teflon heats and the temperatures at which these particles and gases are first
11 emitted, follow:

12 464°F – Ultrafine particulate matter: Teflon produces very
13 small (ultrafine) particles which cause extreme lung
14 damage to rats within 10 minutes of exposure. Longer
15 exposure causes death.

16 680°F – Tetrafluoroethylene (TFE): The National
17 Toxicology Program considers tetrafluoroethylene (TFE)
18 to be a "reasonably anticipated" human carcinogen
19 because it is known to cause cancer in laboratory animals.

20 680°F – Hexafluoropropene (HFP): Exposure to
21 fluorocarbons like HFP can lead to eye, nose and throat
22 irritation; heart palpitations, irregular heart rate,
23 headaches, light-headedness, fluid accumulation in the
24 lung and possibly death. Long-term exposure is associated
25 with decreased motor speed, memory and learning. In
26 mice and rats, inhalation of hexafluoropropene (HFP)
27 causes kidney lesions, decreased numbers of a type of
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1 immune cell and increased urination. IFP also causes
2 increased numbers of chromosomal abnormalities in
3 hamster ovaries.

4 680°F – Difluoroacetic acid (DFA): Kidney toxicity from
5 DFA has been reported in rats.

6 680°F – Monofluoroacetic acid (MFA, fluoroacetic acid or
7 compound 1080): Monofluoroacetic acid is toxic. Doses as
8 low as 0.7 to 2.1 mg/kg can kill people. Initially, people
9 report nausea, vomiting, numbness, tingling, anxiety,
10 muscle twitching, low blood pressure and blurred vision.
11 If exposure is high enough, people can have irregular heart
12 rate, heart attacks and severe convulsions leading to
13 respiratory failure.

14 680°F – Perfluorooctanoic acid (PFOA): The effects of
15 PFOA are discussed throughout this Complaint.

16 878°F – Silicon tetrafluoride (SiF₄): Silicon tetrafluoride
17 is a highly toxic, corrosive gas. In the lungs, moisture
18 causes the silicon particles to separate, releasing toxic
19 hydrofluoric acid and also coating the lung with silicon
20 particles. Inhaling hydrofluoric acid can cause eye and
21 throat irritation, cough, difficult breathing, bluish skin
22 color caused by lack of oxygen, lung damage and fluid
23 accumulation in the lung. Long term exposure can cause
24 weight loss, decreased numbers of red and white blood
25 cells (anemia and leucopenia), discoloration of the teeth
26 and abnormal thickening of the bone.
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1 887°F – Perfluoroisobutene (PFIB): Perfluoroisobutene
2 (PFIB) is toxic. Inhalation can lead to fluid build up in the
3 lung, a condition that can lead to death. PFIB is listed in
4 the Chemical Weapons Convention as a Schedule 2
5 compound. PFIB is many times more toxic than phosgene,
6 a highly toxic corrosive gas also listed as a chemical
7 weapon.

8 932°F – Carbonyl fluoride (COF₂): Breakdown of Teflon
9 in the air is the major source of carbonyl fluoride
10 exposure. Carbonyl fluoride is the fluorine version of
11 phosgene, a chlorinated chemical warfare agent. Carbonyl
12 fluoride fumes can irritate eyes, ears and nose. More
13 serious symptoms of exposure include chest pains,
14 breathing difficulty, fluid accumulation in the lungs,
15 weakness, liver damage and increased glucose levels.

16 932°F – Hydrogen fluoride (HF): Hydrogen fluoride (HF)
17 is a toxic corrosive gas, and can cause death to tissue it
18 comes into contact with, including tissue in the lungs.
19 Breathing HF can cause severe lung damage, such as fluid
20 buildup in the lungs and inflammation of lung passages.

21 1112°F – Trifluoroacetic acid fluoride (CF₃COF):
22 Trifluoroacetic acid fluoride is toxic when it breaks down
23 into hydrogen fluoride and trifluoroacetic acid.
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25 1112°F – Octafluorocyclobutane (OFCB): Inhaling high
26 levels of octafluorocyclobutane can cause heart beat
27 irregularities, unconsciousness and death. People with pre-
28 existing heart conditions may be extra vulnerable.

1 56. The EPA has recently identified significant human health concerns
2 from exposure to PFOA.

3 57. On June 27, 2005, a panel of the EPA's Science Advisory Board
4 ("SAB") released a draft of its conclusions after reviewing the EPA's report entitled
5 "Draft Risk Assessment of the Potential Human Health Effects Associated with
6 Exposure to Perfluorooctanoic Acid (PFOA)."

7 58. A majority of members of the EPA's SAB concluded that PFOA was
8 likely to cause cancer in humans. The SAB stated:

9 that the experimental weight of the evidence with respect
10 to the carcinogenicity of PFOA was stronger than
11 [previously determined by the EPA], and suggested that
12 **PFOA is a 'likely' carcinogen in humans**. According to
13 the EPA's Guidelines for Carcinogen Risk Assessment
14 (also known as EPA's Cancer Guidelines), this descriptor
15 is typically applied to agents that have tested positive in
16 more than one species, sex, strain, site or exposure route,
17 with or without evidence of carcinogenicity in humans.

18 59. A recent Centers for Disease Control study showed that PFOA has
19 contaminated the bloodstream of fetuses throughout the United States.

20 60. DuPont executives nonetheless continue to claim that the use of Teflon
21 in cooking products is completely safe.

22 VI. **CLASS ACTION ALLEGATIONS**

23 61. The Representatives seek declaratory, injunctive, monetary and
24 equitable relief as well as other civil penalties permitted by law on behalf of the
25 Classes, to adjudicate: defendant's liability for its deceptive, unlawful, unfair,
26 unconscionable and fraudulent misrepresentations and material omissions; the
27 classes' entitlement to elect rescission, restitution, and/or disgorgement remedies; to
28 establish a court-operated medical monitoring program; the provision of class notice
once the parties' rights and liabilities are adjudicated by the Court; and other related
forms of equitable relief.

62. Consequently, a class action is appropriate pursuant to Fed. R. Civ. P. 23 (a), 23(b)(1)(A) and (B), and Rule 23(b)(2).

63. However, after that notice process, to the extent more than 100 class members affirmatively elect instead to seek actual damages not incidental to equitable relief, plaintiffs ask the Court retain jurisdiction to determine at that time whether additional certification pursuant to Rule 23(b)(3) would be necessary or appropriate as to the group of those so electing.

64. The first class represented (Class I) is composed of all persons who: purchased or obtained ownership within the State of California one or more cooking product(s) made with or containing Teflon, and their family or household members; first discovered DuPont's misrepresentations and material omissions on or after June 26, 2002; and still owned the cooking product(s) on June 27, 2005.

65. The second class represented (Class II) is composed of all persons who: within the State of California came into ownership for personal, family, or household use, whether by sale, lease, assignment, award by chance or other transfer, of a cooking product(s) made with or containing Teflon, and their family and household members; first discovered DuPont's representations were deceptive, unfair, unlawful, fraudulent and/or unconscionable on or after June 26 2001; and still maintained possession of the cooking products on June 27, 2005.

66. DuPont has knowledge of all licensees authorized to manufacture or sell cookware made with or containing Teflon and the brand and model names so marketed. Upon information and belief, and subject to information obtainable only through pretrial discovery, DuPont licensed the use of Teflon to, among others, the following manufacturers and models of cookware:

<u>MFG.</u>	<u>MODELS</u>
All Clad	Emerilware LTD Cop-R-Chef

	Copper-Core MC2
Anolon	Anolon Titanium Advanced Classic Professional Suregrip Bakeware
Basic Essentials	
Bodum	
Chef's Planet	Arc-42 Cookware Tefmat Oven & Bake Liners
Circulon	Circulon Total Elite Premier DuPont Autograph Circulon Electrics
Crestware	Dupont "Supra Select" Platinum Pro Silverstone Xtra Silverstone Professional
Cuisinart	Chef's Classic
DuPont	Autograph Plantinum Pro Platinum Select Xtra Classic
Farberware	Farberware, Inc. Farberware Millennium Farberware Nonstick

	Aluminum Restaurant Pro Enhanced Nonstick Cookware Select Vibrance Cooks Kitchen Classic Series Nonstick Skillets Farberware Nonstick Bakeware
GAU	
GSI Outdoors	Bugaboo
Kitchenaid	Gourmet Excellence Gourmet Essentials
Megaware Inc. of California	Castalon Castame Triomphe Concorde Magnifica
Newell Rubbermaid	Calphalon
Royal Cougar	
Salton	
Silverstone	Culinary Colors Series Nonstick Stainless Steel Series
T-Fal	Jamie Oliver Cookware
US Foodservice	Next Day Gourmet
Wearever	Mirro Regal

	Wearever
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67. Excluded from the Class are the presiding District Court Judge and Magistrate Judge in this matter, as well as all Judges sitting on the Ninth Circuit Court of Appeals.

Numerosity

68. The persons in the Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the Court.

69. While the exact number of Class members is unknown to the Class Representative Plaintiffs at this time and can only be ascertained through appropriate discovery, the Class Representative Plaintiffs estimate the Class Members to be in excess of 15,000,000 consumers. Class Members may be identified from records maintained by DuPont or its agents or may be notified of the pendency of this action by mail and/or publication using a form of notice similar to that customarily used in consumer class actions.

Common Questions of Law and Fact and Predominance

70. There is a well-defined commonality of interest regarding the questions of law and fact affecting the Class. Questions of law and fact common to the Class, among others, are:

(a) Whether DuPont made, approved, allowed, or ratified representations in California through mass marketing and product-specific advertising that Teflon or the use of Teflon-coated cooking products was safe, healthful, or that use of Teflon-coated cooking products was more healthful than use of non-Teflon-coated cooking products.

(b) Whether DuPont's mass marketing and product-specific advertising in California that Teflon or the use of Teflon-coated cooking products was safe, healthful, or that use of Teflon-coated cooking products was more

1 healthful than use of non-Teflon-coated cooking products, would cause a reasonable
2 person to believe the ordinary use of Teflon-coated cooking products entailed no
3 potential human health risk.

4 (c) Whether at the time of such mass marketing and product-specific
5 advertising in California, DuPont possessed or relied upon a reasonable basis in fact
6 (such as factual, objective, quantifiable, clinical or scientific data or other competent
7 and reliable evidence) substantiating representations that Teflon or the use of
8 Teflon-coated cooking products was safe, healthful, and entailed no potential human
9 health risks.

10 (d) Whether at the time of such mass marketing and product-specific
11 advertising in California, DuPont knew or should have known that the release of
12 substances during the ordinary and foreseeable use of Teflon-coated cooking
13 products could not medically or scientifically be said, to a reasonable degree of
14 professional certainty, to entail no potential human health risks.

15 (e) Whether at the time of such mass marketing and product-specific
16 advertising in California, DuPont had in its possession animal or human test data
17 indicating potential adverse health effects from exposure to one or more of the
18 chemicals that can be released during ordinary and foreseeable use of Teflon-coated
19 cooking products.

20 (f) Whether at the time of such mass marketing and product-specific
21 advertising in California, DuPont had knowledge or possession of blood sample test
22 results of its workers indicating transplacental movement of one or more of the
23 chemicals that can be released during ordinary and foreseeable use of Teflon-coated
24 cooking products.

25 (g) Whether at the time of such mass marketing and product-specific
26 advertising in California, DuPont had in its possession data regarding deformities
27 suffered by the children of female DuPont employees exposed to one or more of the
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1 chemicals that can be released during ordinary and foreseeable use of Teflon-coated
2 cooking products.

3 (h) Whether at the time of such mass marketing and product-specific
4 advertising in California, DuPont had in its possession information demonstrating or
5 tending to demonstrate that one or more of the chemicals that can be released during
6 ordinary and foreseeable use of Teflon-coated cooking products does present
7 potential risk of injury to human health.

8 (i) Whether during the time of such mass marketing and product-
9 specific advertising in California, DuPont had been notified by the EPA that
10 evidence of transplacental movement of one or more of the chemicals that can be
11 released during ordinary and foreseeable use of Teflon-coated cooking products in
12 laboratory rats was “substantial risk data” of a potential human health risk.

13 (j) Whether at the time of such mass marketing and product-specific
14 advertising in California, DuPont knew or should have known that fumes from
15 heated Teflon-coated cooking products can sicken people.

16 (k) Whether the representations in DuPont’s mass marketing and
17 product specific advertising in California, that Teflon or the use of Teflon-coated
18 cooking products was safe, fit, effective for their intended purpose, healthful, or
19 more healthful than use of non-Teflon-coated cooking products, were qualified or
20 unqualified.

21 (l) Whether at the time of such mass marketing and product-specific
22 advertising in California, DuPont disclosed, in a fashion sufficiently specific so as to
23 leave no reasonable probability of misunderstanding, clearly, conspicuously and in
24 close proximity to its affirmative representations, any and all material exclusions,
25 reservations, limitations, modifications, or conditions relevant to the affirmative
26 representations that Teflon or the use of Teflon-coated cooking products was safe,
27 healthful, or more healthful than use of non-Teflon-coated cooking products.

28

1 (m) Whether DuPont's mass marketing and product-specific
2 advertising in California affirmatively represented that Teflon or the use of Teflon-
3 coated cooking products was safe, fit, effective for their intended purpose, healthful,
4 or more healthful than use of non-Teflon-coated cooking products, when DuPont
5 knew or should have known those representations would justifiably induce class
6 members to choose, retain, and/or continue use of Teflon-coated cookware, or to
7 refrain from choosing and using other cookware, due to DuPont's failure to disclose
8 - knowingly, with scienter, and/or through a failure to exercise reasonable care -
9 what it actually knew, and actually did not know, about the truth or falsity of those
10 representations, thus, rendering those representations untrue, unlawful, deceptive, or
11 misleading, to the injury of class members.

12 (n) Whether the class representative plaintiffs' claims are
13 sufficiently similar to the claims of prospective class members.

14 (o) Whether the class representative plaintiffs no longer want to use
15 or own their Teflon-coated cooking products.

16 (p) Whether DuPont's conduct violated the California Unfair
17 Competition Law, California Business and Professions Code §§ 17200 et seq.;

18 (q) Whether DuPont's conduct violated the California False
19 Advertising Law, California Business and Professions Code §§ 17500 et seq.;

20 Whether DuPont's conduct violated the California Consumers Legal Remedies Act,
21 California Civil Code §§ 1750 et seq.;

22 (r) Whether DuPont's conduct warrants the imposition of punitive
23 damages to deter further such conduct;

24 (s) Whether the class representative plaintiffs and the other class
25 members have suffered damages;

26 (t) Whether DuPont is liable to the class representative plaintiffs
27 and the other class members for damages;

28

1 (u) The types of equitable and injunctive relief to which the class
2 representative plaintiffs and the other class members may be entitled for deceptive,
3 misleading, unlawful and fraudulent misrepresentations; and

4 (v) Such other common factual and legal issues as are apparent from
5 the allegations and causes of action asserted in this First Amended Complaint.

6 71. These common questions of law and fact are governed by the laws of
7 the State of California, where DuPont has engaged in its wrongful conduct, and
8 predominate over questions that affect only individual Class Members.

9 **Typicality**

10 72. The claims of the Class Representative Plaintiffs are typical of those of
11 the Class. The Class Representative Plaintiffs are committed to the vigorous
12 prosecution of this action and have retained competent counsel experienced in
13 litigation of this nature to represent them. The Class Representative Plaintiffs
14 anticipate no difficulty in the management of this litigation as a Class Action.
15 Accordingly, the Class Representative Plaintiffs are adequate representatives of the
16 Class and will fairly and adequately protect the interests of the Class.

17 **Superiority**

18 73. A class action is the best available method for the fair and efficient
19 adjudication of this controversy. The Class Members are so numerous that the
20 joinder of all Members is impracticable, if not impossible. Because the harm
21 suffered by individual Class Members, while not inconsequential, may be relatively
22 small, the expense and burden of individual litigation makes it impractical for Class
23 Members to seek redress individually for the wrongful conduct alleged herein.
24 Should each individual Class Member be required to bring separate actions, the
25 resulting multiplicity of lawsuits would cause undue hardship and expense on the
26 Court and on the litigants. The prosecution of separate actions would also create a
27 risk of inconsistent rulings which might be dispositive of the interest of other Class
28

Members who are not parties to the adjudications and/or may substantially impede their ability to protect their interests.

Adequacy of Representation

74. The Class Representative Plaintiffs can and will fairly and adequately represent and protect the interests of all the Class Members because the Class Representative Plaintiffs' claims are typical of their claims, and the Class Representative Plaintiffs have no interests that conflict with or are antagonistic to their interests. The Class Representative Plaintiffs intend to vigorously prosecute this action and has retained attorneys competent and experienced in class actions who will vigorously prosecute this litigation.

75. To the extent such conditions exist, all conditions precedent to the maintenance of this action have been performed, have occurred, or have otherwise been waived.

FIRST CAUSE OF ACTION

**(Violation of the California Unfair Competition Law,
California Business & Professions Code §§ 17200, et seq.)**

76. The Class Representative Plaintiffs reallege and reincorporate the allegations contained in paragraphs 1 through 75 above and paragraphs 86 through 94 and 97-103 below as if fully set forth herein.

77. The California Unfair Competition Law defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal. Bus. & Prof. Code § 17200. This claim is brought on behalf of Class II.

78. The actions and conduct of DuPont as described herein constitute unfair, unlawful and fraudulent trade practices within the meaning of California Business and Professions Code §§ 17200, et seq. The Class Representative Plaintiffs and the Class II Members are individuals who have purchased, obtained, or been exposed to the use of Teflon-coated cookware products for or in connection

1 with personal, family and household purposes within the State of California and,
2 thus, are members of the public who are intended to be protected by this statute.

3 79. The practices of DuPont are unlawful, fraudulent, unfair and have
4 deceived, and are likely to deceive, members of the general public in that, among
5 other things:

6 (a) DuPont knew or should have known that Teflon emissions from
7 heating were or are potentially harmful to consumers, cannot be said to pose no risk
8 to human health given the medical and scientific evidence within DuPont's
9 knowledge, and are not without risks to human health for all uses or conditions
10 associated with personal, family, and household use;

11 (b) DuPont knowingly made misleading representations to Class II
12 Member that products made with or containing Teflon were safe and without risks
13 for use by consumers and their families;

14 (c) DuPont knowingly advertised that products made with or
15 containing Teflon were safe and without risks to consumers and their families
16 without stating all material conditions, limitations, exclusions, and qualifications
17 applicable thereto clearly, conspicuously, and in close proximity to those
18 representations;

19 (d) DuPont knowingly made false representations to Class II
20 Members that products made with or containing Teflon were safe and not potentially
21 harmful to the Class despite what it knew of and concealed about the adverse effects
22 of chemicals contained in Teflon demonstrated in animal studies, the blood sample
23 data it compiled regarding transplacental movement of chemicals contained in
24 Teflon, and the information it knew of regarding the occurrence of birth defects in
25 the children of its female workers;

26 (e) DuPont failed to disclose to Class II Members the information it
27 knew of relating to the adverse effects of chemicals contained in Teflon
28 demonstrated in animal studies, the blood sample data it compiled regarding

1 transplacental movement of chemicals contained in Teflon and the information it
2 knew of regarding the occurrence of birth defects in the children of its female
3 workers;

4 (f) DuPont knew that exposure to PFOA has caused injuries to
5 humans and animals but concealed knowingly and failed to disclose these facts in its
6 mass marketing and product specific advertising of Teflon for cookware use;

7 (g) DuPont knew that exposure to PFOA has caused injuries to
8 humans and animals but concealed its knowledge of the potential dangers associated
9 with the use of Teflon from the public and from the EPA in order to deceive
10 customers into using and purchasing products made with or containing Teflon;

11 (h) DuPont has stated repeatedly and within the past two years that
12 both Teflon and PFOA are “safe” products for consumer use without the necessary
13 substantiating medical and scientific evidence;

14 (i) DuPont has recently expressed an intention to replace PFOA in
15 the production of Teflon by late 2006. This fact implies that DuPont is aware of the
16 potential risks that may be associated with the use of cooking products that have
17 been produced with Teflon and with PFOA.

18 80. As a direct and proximate result of the foregoing, the Class
19 Representative Plaintiffs and other Class Members have been damaged.

20 81. DuPont, through its acts of unfair competition, has acquired money
21 from the Class Representative Plaintiffs and the Class Members in the amounts that
22 the Class Representative Plaintiffs and the Class Members have paid directly or
23 indirectly, to DuPont or its agents for cooking products made with or containing
24 Teflon. Pursuant to California Business and Professions Code § 17203, the Class
25 Representative Plaintiffs are entitled to injunctive relief and such other appropriate
26 orders as may be necessary to curb and restrain the unfair, unlawful and fraudulent
27 practices engaged in by DuPont. So as to not be unjustly enriched by their own
28 wrongful actions and conduct, DuPont should be required to disgorge and restore to

1 the Class Representative Plaintiffs, and the affected members of the general public,
 2 all money and property obtained as a result of the unfair, unlawful and fraudulent
 3 trade practices engaged in by DuPont.

4 82. DuPont further violated the California Unfair Competition Law through
 5 its unlawful violations of the California Consumers Legal Remedies Act, Cal. Civ.
 6 Code §§ 1750, et seq., as set forth below in connection with the Class
 7 Representative Plaintiffs' Second Cause of Action.

8 83. DuPont further violated the California Unfair Competition Law through
 9 its unlawful violations of the California False Advertising Law, Cal. Bus. & Prof.
 10 Code §§ 17500, et seq., as set forth below in connection with the Class
 11 Representative Plaintiffs' Third Cause of Action.

12 84. DuPont further violated the California Unfair Competition Law,
 13 through its unlawful violations of the Toxic Substances Control Act, 15 U.S.C. §
 14 2615 ("TSCA"). TSCA § 15(3)(b), 15 U.S.C. § 2614(3)(b), provides that it is
 15 unlawful for any person "to fail or refuse to submit reports, notices or other
 16 information" required by the TSCA. As set forth in paragraphs 35-45 above,
 17 DuPont's failure or refusal to immediately submit certain blood sampling and data
 18 monitoring information related to PFOA as required under TSCA 8(e), 15 U.S.C. §
 19 2607, is an unlawful act under the TSCA § 15(3)(b).

20 **SECOND CAUSE OF ACTION**

21 **(Violation Of The California Consumers Legal Remedies Act**

22 **California Civil Code §§ 1750 et seq.**

23 85. The Class Representative Plaintiffs reallege and reincorporate the
 24 allegations contained in paragraphs 1 through 75 above as if fully set forth herein.

25 86. The Class Representative Plaintiffs bring this cause of action seeking
 26 injunctive relief and damages pursuant to the California Consumers Legal Remedies
 27 Action, California Civil Code §§ 1750 et seq. ("the Act"). The Act applies to the
 28

1 conduct of DuPont herein because it extends to transactions which are intended to
2 result, or which do result, in the sale or lease of goods or services to consumers.

3 87. This claim is brought on behalf of Class II. The Class Representative
4 Plaintiffs and the Class II Members are individuals who have purchased, obtained,
5 or been exposed to the use of Teflon-coated cookware products for or in connection
6 with personal, family and household purposes within the State of California and,
7 thus, are members of the public who are intended to be protected by this statute.

8 88. The practices of DuPont violated, and continue to violate, the Act in at
9 least the following respects:

10 (a) In violation of Section 1770(a)(4) of the Act, DuPont has used
11 deceptive representations in connection with goods offered for sale;

12 (b) In violation of Section 1770(a)(5) of the Act, DuPont has
13 represented that the goods had characteristics, ingredients, qualities or benefits
14 which they did not have;

15 (c) In violation of Section 1770(a)(7) of the Act, DuPont has
16 represented that the goods are, or were, or a particular standard, quality or grade
17 which they did not have; and

18 (d) In violation of Section 1770(a)(14) of the Act, DuPont has
19 represented that its goods confers or involves rights, remedies or obligations which
20 it does not have or involve.

21 89. The practices of DuPont have deceived and are likely to deceive
22 members of the consuming public.

23 90. As a direct and proximate result of the acts, omissions and conduct of
24 DuPont, the Class Representative Plaintiffs and the Class Members have incurred
25 economic damage in an amount not yet ascertained. This First Amended Complaint
26 will be amended to assert the amounts upon information received from the books
27 and records of DuPont.

28

1 91. Pursuant to California Civil Code § 1780(a), the Class Representative
2 Plaintiffs and the Class Members seek restitution of all amounts they have paid for
3 DuPont products containing or made with Teflon and actual damages in an amount
4 to be ascertained at trial.

5 92. The conduct of DuPont was implemented and carried out with a willful
6 and intentional and done with fraud, oppression and malice against the Class
7 Representative Plaintiffs and the Class Members with a conscious disregard of the
8 Class Representative Plaintiffs' and Class Members' rights and statutory mandates.
9 As such, the Class Representative Plaintiffs and the Class Members seek punitive
10 damages against DuPont in a sum appropriate to punish the defendants and to deter
11 future similar misconduct.

12 93. The Class Representative Plaintiffs and the Class Members further
13 request this Court to award them their costs and reasonable attorney's fees, pursuant
14 to California Civil Code § 1780(d). The Class Representative Plaintiffs and the
15 Class Members further request this Court to enjoin DuPont from continuing to
16 employ the unlawful methods, acts, and practices alleged above, pursuant to
17 California Civil Code § 1780(a)(2).

18 94. On or about July 27, 2005, the Class Representative Plaintiffs notified
19 DuPont in writing, pursuant to, and in compliance with, California Civil Code §
20 1782. See Complaint, ¶80. Specifically, Paragraph 80 of the Complaint stated:

21 The Class Representative Plaintiffs, on behalf of
22 themselves and all Class Members, hereby demand that
23 within 30 days from service of this Complaint, DuPont
24 correct, repair, replace or otherwise rectify the deceptive
25 practices complained of herein for the entire Class
26 pursuant to California Civil Code § 1770. Failure to do so
27 will result in the Class Representative Plaintiffs amending
28 this Complaint to seek damages for such deceptive
practices pursuant to California Civil Code § 1782.

1 95. The Class Representative Plaintiffs have filed with this Court and
2 served on DuPont their Venue Declaration pursuant to California Civil Code §
3 1780(c).

4 **THIRD CAUSE OF ACTION**

5 **(Violation of the California False Advertising Law,**
6 **California Business & Professions Code §§ 17500, et seq.)**

7 96. The Class Representative Plaintiffs reallege and reincorporate the
8 allegations contained in paragraphs 1 through 75 above as if fully set forth herein.

9 97. California Business & Professions Code § 17500 provides that it is
10 unlawful for any person, firm, corporation or association to dispose of property or
11 perform services, or induce the public to enter into any obligation relating thereto,
12 through the use of untrue or misleading advertising.

13 98. This claim is brought on behalf of Class II. The Class Representative
14 Plaintiffs and the Class II Members are individuals who have purchased, obtained,
15 or been exposed to the use of Teflon-coated cookware products for or in connection
16 with personal, family and household purposes within the State of California and,
17 thus, are members of the public who are intended to be protected by this statute.

18 99. At all times mentioned herein, DuPont committed acts of disseminating
19 untrue and misleading statements as defined by California Business & Professions
20 Code § 17500 by engaging in, among other things, the following acts and practices
21 with intent to induce members of the public to purchase and use Teflon-coated
22 cooking products:

23 (a) DuPont knew or should have known that Teflon emissions from
24 heating were or are potentially harmful to consumers, can not be said to pose no risk
25 to human health given the medical and scientific evidence within DuPont's
26 knowledge, and are not without risks to human health for all uses or conditions
27 associated with personal, family, and household use;

1 (b) DuPont knowingly made misleading representations to Class II
2 that products made with or containing Teflon were safe and without risks for use by
3 consumers and their families;

4 (c) DuPont knowingly advertised that products made with or
5 containing Teflon were safe, fit, effective for their intended purposes and without
6 risks to consumers and their families without stating all material conditions,
7 limitations, exclusions, and qualifications applicable thereto clearly, conspicuously,
8 and in close proximity to those representations;

9 (d) DuPont knowingly made false representations to Class II that
10 products made with or containing Teflon were safe and not potentially harmful to
11 the Class despite what it knew of and concealed about the adverse effects of
12 chemicals contained in Teflon demonstrated in animal studies, the blood sample
13 data it compiled regarding transplacental movement of chemicals contained in
14 Teflon, and the information it knew of regarding the occurrence of birth defects in
15 the children of its female workers;

16 (e) DuPont knew that exposure to PFOA has caused injuries to
17 humans and animals but concealed knowingly and failed to disclose these facts in its
18 mass marketing and product specific advertising of Teflon for cookware use;

19 (f) DuPont has stated repeatedly and within the past two years that
20 both Teflon and PFOA are “safe” products for consumer use without the necessary
21 substantiating medical and scientific evidence;

22 (g) Purposefully downplaying and understating the potential health
23 hazard and risks associated with Teflon-coated cooking products; and

24 (h) Continue to promote and advertise Teflon-coated cooking
25 products knowing that there are potentially severe health risks associated with the
26 use of said products.

27 100. The foregoing practices constitute false and misleading statements
28 within the meaning of California Business and Professions Code § 17500 et seq.

1 101. The acts of untrue and misleading statements by DuPont described
2 hereinabove present a continuing threat to members of the public in that the acts
3 alleged herein are continuous and ongoing, and the public will continue to suffer the
4 harm and/or be expose to the potential harm alleged herein.

5 102. As a result of the above-described conduct, DuPont has been, and will
6 continue to be, unjustly enriched. Specifically, DuPont has been unjustly enriched
7 by millions of dollars of ill-gotten gains from the sale of Teflon-coated cooking
8 products in the State of California, sold in large part of as a result of the actions and
9 omissions described herein.

10 103. Class Representative Plaintiffs see the imposition of a constructive trust
11 over, and restitution and disgorgement of, monies collected and profits realized by
12 DuPont to cease such false and misleading advertising in the future.

13 **FOURTH CAUSE OF ACTION**

14 **(Negligence)**

15 104. The Class Representative Plaintiffs reallege and reincorporate the
16 allegations contained in paragraphs 1 through 75 above as if fully set forth herein.

17 105. DuPont designed, manufactured, assembled, distributed, marketed and
18 sold Teflon for use in cooking products knowing that such products would be used
19 without inspection for hazards.

20 106. At all times material hereto, the Teflon used in cooking products was in
21 substantially the same condition as when it left the possession of DuPont with
22 respect to the hazards alleged below.

23 107. The Teflon manufactured, assembled, distributed, marketed, processed
24 and sold by DuPont, at the time it left the possession of DuPont, was hazardous and
25 inherently dangerous for its intended use, and was unreasonably dangerous and
26 presented and constituted a reasonable risk of danger and injury because:

27 (w) Teflon, when heated, can emit toxic substances, and

28 (x) Teflon contains substances that are likely to be carcinogenic.

1 108. At all times material hereto, DuPont owed a duty to the Class
2 Representative Plaintiffs and the Class Members, to design, manufacture, assemble,
3 inspect and/or test the Teflon it manufactured, processed, and distributed in such a
4 manner and with the exercise of reasonable care to prevent cooking products made
5 with Teflon from releasing hazardous substances when heated.

6 109. At all times material hereto, DuPont further had a duty to warn
7 purchasers or intended users of Teflon-coated cooking products, including the Class
8 Representative Plaintiffs and the Class Members, of the potential health hazards of
9 Teflon and PFOA which it knew or should have known of in the exercise of
10 ordinary care, which hazards rendered the subject cooking products unreasonably
11 dangerous to use.

12 110. DuPont breached its duties by negligently and carelessly designing,
13 manufacturing, assembling, distributing, marketing and selling Teflon, knowing it
14 will be used in cooking products, in the following ways:

15 (y) by failing to use due care in developing Teflon for consumer use;

16 (z) by failing to notify purchasers and users of Teflon-coated
17 cooking products, including the Class Representative Plaintiffs and the Class
18 Members, of inherent dangers associated with the use of Teflon which DuPont knew
19 or should have known of;

20 (aa) by failing to adequately test whether Teflon is safe for consumer
21 use; and

22 (bb) by failing to adequately warn the Class Representative Plaintiffs
23 and the Class Members of defects which it knew or reasonably should have known
24 of in the exercise of ordinary care.

25 111. As a direct and proximate result of DuPont's breach of duty, the Class
26 Representative Plaintiffs and the Class Members have been damaged in an amount
27 to be determined at trial.

28

FIFTH CAUSE OF ACTION

(Fraudulent Inducement, Deceit, And Fraudulent Concealment)

112. The Class Representative Plaintiffs reallege and reincorporate the allegations contained in paragraphs 1 through 75 above as if fully set forth herein.

113. As set forth herein, DuPont made material representations of fact to Class Representative Plaintiffs and the other Class Members, both actually and by omission.

114. When misrepresentations and/or omissions occur in the context of extensive advertising or a common design of routine representations, class-wide exposure and reliance need not be plead specifically, but may be plead with sufficiency so as to put the defendant on notice of the allegations and a justifiably reliable representation may be inferred or presumed from the circumstantial evidence of widespread dissemination. *See, inter alia, Committee on Children's Television, Inc. v. General Foods Corporation, et al.*, 35 Cal.3d 197, 673 P.2d 660, 197 Cal.Rptr. 783 (1983).

115. For the past fifty years, DuPont directly benefited from and knowingly participated in the mass marketing and product-specific advertising for sale and distribution in the State of California of Teflon and Teflon-coated cooking products.

116. Through this mass marketing and product-specific advertising, DuPont represented that Teflon was safe, fit, effective for its intended purpose, healthful, or more healthful than use of non-Teflon-coated cooking products. This marketing and advertising campaign released misinformation to, *inter alia*, the members of Class I.

117. The intent of DuPont's mass marketing, representations, assurances and product-specific advertising was to induce the purchase of Teflon-coated cooking products in the State of California for cooking use by emphasizing qualities and characteristics thereof material to the decisions of the Class Representative Plaintiffs and Class I members as to the purchase, use or retention of Teflon-coated cooking products for use over brands or types of cookware without a Teflon-coating.

1 118. Representations of the safety and healthfulness for cooking use,
2 whether in absolute or comparative terms, of Teflon and Teflon-coated cooking
3 products are material representations on which the Class Representative Plaintiffs
4 and Class I members justifiably relied in deciding to purchase or retain Teflon-
5 coated cooking products for use over brands or types of cookware without a Teflon
6 coating.

7 119. DuPont's mass marketing and product-specific advertising, including
8 the assurances described above, made to induce the purchase and use of Teflon-
9 coated cooking products in California, were such to cause the Class I Members, the
10 Class Representative Plaintiffs, and any reasonable person to justifiably believe the
11 ordinary use of Teflon-coated cooking products entailed no potential human health
12 risk.

13 120. At all relevant times, DuPont knew or should have known that the
14 ordinary use of Teflon-coated cooking products can cause the release of substances
15 that cannot be said, to a reasonable degree of medical or scientific certainty, to pose
16 no potential human health risk.

17 121. At all relevant times, DuPont knew or should have known that animal
18 or human test data in its possession indicated potential adverse health effects from
19 exposure to one or more of the substances that can be released during ordinary use
20 of Teflon-coated cooking products.

21 122. At all relevant times, DuPont had in its possession blood sample test
22 results of its workers indicating transplacental movement of one or more of the
23 chemicals that can be released during the ordinary and foreseeable use of Teflon-
24 coated cooking products.

25 123. At all relevant times, DuPont had in its possession data regarding
26 deformities suffered by the children of female DuPont employees exposed to one or
27 more of the chemicals that can be released during the ordinary and foreseeable use
28 of Teflon-coated cooking products.

1 124. At all relevant times, DuPont had in its possession information
2 demonstrating or tending to demonstrate that one or more of the chemicals that can
3 be released during the ordinary and foreseeable use of Teflon-coated cooking
4 products presented potential risks of injury to human health.

5 125. At all relevant times, DuPont had been notified by the EPA that
6 evidence of transplacental movement of one or more of the chemicals that can be
7 released during ordinary use of Teflon-coated cooking products in laboratory rats
8 was “substantial risk data” of a potential human health risk.

9 126. At all relevant times, DuPont knew or should have known that fumes
10 from heated Teflon-coated cooking products can sicken people.

11 127. DuPont’s knowing failure to disclose and knowing decision and/or to
12 conceal the above health-related information induced the Class Representative
13 Plaintiffs and other Class I members to purchase, retain and continue use of Teflon-
14 coated cooking products, and DuPont knew that full, timely, and complete
15 disclosure would negatively impact sales of Teflon cookware and the profits from its
16 sale of Teflon for such purposes.

17 128. DuPont knew or should have known that its failure to disclose and/or
18 concealing the above health-related information to the Class Representative
19 Plaintiffs and the other Class I members made DuPont’s mass marketing and
20 product-specific representations of the safety and healthfulness of Teflon and
21 Teflon-coated cooking products for ordinary and foreseeable use whether absolute
22 or comparative in nature untrue or misleading.

23 129. DuPont therefore had a duty to speak, which it breached negligently,
24 recklessly, knowingly, intentionally, and/or with malice by concealing and/or not
25 disclosing all material facts known or in its possession.

26 130. At the time the aforementioned material express and implied
27 representations to the Class Representative Plaintiffs and Class I members were
28 made, the Class Representative Plaintiffs and Class I members were ignorant of

1 their material falsity and believed them to be true. Had they known that DuPont had
 2 made, or caused to be made, false and misleading representations, the Class
 3 Representative Plaintiffs and Class I members would not have purchased, retained
 4 or used Teflon-coated cooking products.

5 131. As set forth herein, when DuPont made the representations set forth
 6 hereinabove, it knew them to be false, or made them with reckless disregard of their
 7 truth or falsity, and made them with the intention that the Class Representative
 8 Plaintiffs and Class I members would rely on the statements and omissions so that
 9 Class Representative Plaintiffs and Class I members would purchase and use
 10 Teflon-coated cooking products.

11 132. As the proximate result of DuPont's fraudulent inducement, deceit, and
 12 fraudulent concealment, the Class Representative Plaintiffs and the Class I members
 13 suffered injury, including but not limited to the purchase, retention for use, and
 14 continued use of Teflon coated cooking products.

15 133. The Class Representative Plaintiffs and Class I members are informed
 16 and believe, and thereon allege, that DuPont committed the acts alleged herein with
 17 knowledge of their wrongfulness. In committing such acts, DuPont is guilty of
 18 oppression, fraud and malice, entitling the Class Representative Plaintiffs and Class
 19 I members to an award of exemplary and punitive damages in an amount
 20 appropriate to punish DuPont and to deter such conduct in the future.

21 **SIXTH CAUSE OF ACTION**

22 **(Negligent Misrepresentation)**

23 134. The Class Representative Plaintiffs reallege and reincorporate the
 24 allegations contained in paragraphs 1 through 75 above as if fully set forth herein.

25 135. As set forth herein, DuPont negligently made material representations
 26 of fact to the Class Representative Plaintiffs, both actually and by omission.

27 136. When misrepresentations and/or omissions occur in the context of
 28 extensive advertising or a common design of routine representations, class-wide

1 exposure and reliance need not be plead specifically, but may be plead with
2 sufficiency so as to put the defendant on notice of the allegations and a justifiably
3 reliable representation may be inferred or presumed from the circumstantial
4 evidence of widespread dissemination. *See, inter alia, Committee on Children's*
5 *Television, Inc. v. General Foods Corporation, et al.*, 35 Cal.3d 197, 673 P.2d 660,
6 197 Cal.Rptr. 783 (1983).

7 137. For the past fifty years, DuPont directly benefited from and knowingly
8 participated in the mass marketing and product-specific advertising for sale and
9 distribution in the State of California of Teflon and Teflon-coated cooking products.

10 138. Through this mass marketing and product-specific advertising, DuPont
11 represented that Teflon was safe, fit, effective for its intended purpose, healthful, or
12 more healthful than use of non-Teflon-coated cooking products. This marketing and
13 advertising campaign released misinformation to, *inter alia*, the members of Class I.

14 139. The intent of DuPont's mass marketing, representations, assurances and
15 product-specific advertising was to induce the purchase of Teflon-coated cooking
16 products in the State of California for cooking use by emphasizing qualities and
17 characteristics thereof material to the decisions of the Class Representative Plaintiffs
18 and Class I members as to the purchase, use or retention of Teflon-coated cooking
19 products for use over brands or types of cookware without a Teflon-coating.

20 140. Representations of the safety and healthfulness for cooking use,
21 whether in absolute or comparative terms, of Teflon and Teflon-coated cooking
22 products are material representations on which the Class Representative Plaintiffs
23 and Class I members justifiably relied in deciding to purchase or retain Teflon-
24 coated cooking products for use over brands or types of cookware without a Teflon
25 coating.

26 141. DuPont's mass marketing and product-specific advertising, including
27 the assurances described above, made to induce the purchase and use of Teflon-
28 coated cooking products in California, were such to cause the Class I Members, the

1 Class Representative Plaintiffs, and any reasonable person to justifiably believe the
2 ordinary use of Teflon-coated cooking products entailed no potential human health
3 risk.

4 142. The Class Representative Plaintiffs are informed and believe, and
5 thereon allege, that at the time DuPont made the aforesaid material express and
6 implied representations to the Class Representative Plaintiffs and Class I members,
7 DuPont intended that they rely thereon without any reasonable basis for believing
8 these express and implied material representations to be true, and rendering them to
9 be false. By doing so, DuPont negligently led the Class Representative Plaintiffs
10 and Class I members.

11 143. As a direct and proximate result of the negligent express and implied
12 misrepresentations of DuPont as set forth herein, and the Class Representative
13 Plaintiffs and Class I members' justifiable reliance thereon, the Class Representative
14 Plaintiffs and Class I members have been damaged in an amount to be determined
15 according to proof at trial.

16 **SEVENTH CAUSE OF ACTION**

17 **(Restitution--Unjust Enrichment)**

18 144. The Class Representative Plaintiffs reallege and reincorporate the
19 allegations contained in paragraphs 1 through 75 and 112 through 142. This cause of
20 action is brought on behalf of a sub-class of Class I and Class II Members who
21 purchased within the State of California one or more cooking products made with or
22 containing Teflon on or after July 27, 2001 and still owned the cooking product(s)
23 on July 28, 2005 (the "Restitution Sub-Class Members").

24 145. It is unjust and inequitable for DuPont to retain the benefits it has
25 received as the result of the conduct hereinabove alleged, yet DuPont has failed to
26 make restitution to the Class Representative Plaintiffs or the Restitution Sub-Class
27 Members. Such failure constitutes unjust enrichment.

146. As the direct and proximate result of the foregoing, the Class Representative Plaintiffs Restitution Sub-Class Members are entitled to receive, and DuPont should be required to make, restitution of all sums received by DuPont from the Class Representative Plaintiffs and Restitution Sub-Class Members from the sale of Teflon-coated products in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the Class Representative Plaintiffs, on behalf of themselves, the Class Members, and all others similarly situated, pray for the following relief:

1. For an order certifying that this action is properly brought and may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that Plaintiffs be appointed as Class Representatives, and that the Class Representative Plaintiffs' counsel be appointed Class Counsel;

2. For injunctive relief requiring DuPont (i) to create a fund for independent scientific researchers to further investigate the potential for adverse health effects to consumers who have used cooking products containing Teflon; (iii) to provide a warning label on cooking products containing Teflon regarding the potential adverse and harmful effects of using Teflon-coated cooking products;

3. For compensatory damages in an amount to be determined at trial;

4. For punitive damages in an amount to be determined at trial;

5. For restitution in an amount to be determined at trial;

6. For pre-judgment and post-judgment interest;

7. For court costs, and attorneys' fees;

8. For the imposition of civil penalties as allowed by statute;

9. For an order appointing a receiver, pursuant to California Business and Professions Code § 17203, to administer the disgorgement and restitution of the profits and ill-gotten gains acquired by and through DuPont's unfair, unlawful dishonest and deceptive acts;

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By: s/ Kimberley K. Baer
Kimberley K. Baer, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Electronic Mail and a true and correct copy of the Certificate of Service (only) furnished via U.S. Mail to: **Adam L. Hoeflich, Esq.**, (adam.hoeflich@bartlit-beck.com) Bartlit Beck Herman Palenchar & Scott LLP, 54 W. Hubbard Street, Chicago, IL 60610; **Robert Fanter, Esq.**, (fanter@whitfieldlaw.com) Whitfield & Eddy 317 Sixth Avenue, Suite 1200, Des Moines, Iowa 50309 and **John Sherk, Esq.**, (jsherk@shb.com) Shook Hardy & Bacon LLP, 2555 Grand Blvd., Kansas City, MO 64108 this 8th day of May 2006.

By: s/ Kimberley K. Baer
Kimberley K. Baer, Esq.